

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD GRAY,

Petitioner,

09 Civ. 0748 (JSR) (DFE)

-against-

(This is not an ECF case)

U.S. HOMELAND SECURITY, BUREAU OF
IMMIGRATION AND CUSTOMS ENFORCEMENT,
201 VARICK STREET, 11TH FLOOR
VARICK FEDERAL DETENTION CENTER,
NEW YORK, NY 10014,

REPORT AND RECOMMENDATION
TO JUDGE RAKOFF

Respondent.

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DOUGLAS F. EATON, United States Magistrate Judge.

The *pro se* habeas corpus petition of Richard Gray challenged his detention by the Bureau of Immigration and Customs Enforcement ("ICE") on the ground that he would not receive proper medical care if he is deported to Jamaica. He alleged that he needs dialysis, and that dialysis machines are not available in Jamaica. For the reasons discussed below, I recommend that Judge Rakoff dismiss Mr. Gray's petition.

Mr. Gray's petition (undated but received by the Pro Se Office on December 19, 2008), was accepted for filing on January 27, 2009. Assistant U.S. Attorney Kirti V. Reddy filed a Notice of Appearance for Respondent on February 20, 2009. On March 20, 2009, I issued a scheduling order. However, the Postal Service returned Mr. Gray's copy of my order. My law clerk then asked AUSA Reddy to locate Mr. Gray.

On April 2, 2009, AUSA Reddy told my law clerk that Mr. Gray had been released (under supervision) from ICE's Federal Detention Center. She had his home address and telephone number, but said that he had not returned her repeated calls to that number. By Memorandum and Order dated April 14, I asked Mr. Gray to write to me about whether he still wished to pursue his habeas corpus petition.

On April 20, 2009, my law clerk spoke to Mr. Gray's Parole Officer, P.O. Williams. P.O. Williams advised her that Mr. Gray has been in Jamaica Hospital since March 14, 2009. I then wrote a new Memorandum and Order (dated April 20) asking Mr. Gray to answer the following question: "Do you still intend to pursue

your writ of habeas corpus, Docket Number 09 Civ. 0748, in the United States District Court for the Southern District of New York?" P.O. Williams graciously agreed to hand deliver to Mr. Gray copies of my Memorandum and Orders dated March 20, April 14, and April 20, 2009.

On April 21, 2009, AUSA Reddy and Mr. Gray placed a telephone call to my law clerk. Mr. Gray informed my law clerk that he had received a copy of my April 14 Memorandum and Order, and that he no longer wishes to pursue his habeas petition. At my law clerk's request, a social worker at Jamaica Hospital (1) wrote "I, Richard Gray, no longer wish to pursue this petition" on the Order, (2) witnessed Mr. Gray's signing of that statement, and (3) faxed the signed copy to me. Later that day, P.O. Williams visited Mr. Gray at the hospital; on a separate copy of my April 20 Memorandum and Order, Mr. Gray again signed that he no longer wishes to pursue his writ of habeas corpus. P.O. Williams faxed me the signed copy and mailed the original, which I will send to the Docket Clerk for docketing.

On April 29, 2009, at my request, my law clerk asked AUSA Reddy to answer the following three questions:

- (1) Who is paying for Mr. Gray's dialysis?
- (2) Did Mr. Gray have counsel at his deportation hearing?
- (3) Will the United States deport Mr. Gray if it cannot find a facility in Jamaica that can properly treat his medical condition?

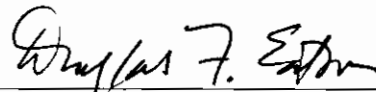
AUSA Reddy responded by letter dated May 8, 2009, which I will annex to today's Report and Recommendation. As to Question 1, she states that ICE does not have any information regarding the payment of Mr. Gray's medical treatments after he was released from custody. As to Question 2, she states that Mr. Gray appeared *pro se* at his immigration hearings. As to Question 3, she states that "the Jamaican consulate is searching for a medical treatment facility in Jamaica that will accept Gray and that the consulate will not issue Gray's travel documents until it finds such a facility."

CONCLUSION AND RECOMMENDATION

I recommend that Judge Rakoff dismiss Mr. Gray's habeas corpus petition for the following three reasons. First, Mr. Gray knowingly and voluntarily withdrew his petition. Second, the petition is moot because Mr. Gray is no longer in custody. See *Pierrilus v. ICE*, 293 Fed. Appx. 78, 79 (2d Cir. 2008)

("[P]etitioner's challenge to the length of his detention is moot as a result of his release from DHS custody."); *Sayavong v. McElroy*, 2003 WL 470576, at *1, 3 (S.D.N.Y. Jan. 9, 2003) (Maas, M.J.) (recommending that Judge Pauley deny a similar petition because "Sayavong has been released under supervision since the filing of the petition, rendering this proceeding moot"), adopted by Judge Pauley on January 31, 2003. Third, it appears that Mr. Gray will not be deported unless the Jamaican consulate can find a facility that will properly treat Mr. Gray's medical condition and provide him with dialysis.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, any party may object to this recommendation within 10 business days after being served with a copy (i.e. **no later than June 5, 2009**) by filing written objections with the Clerk of the U.S. District Court and mailing copies (a) to the opposing party, (b) to the Hon. Jed S. Rakoff, U.S.D.J. at Room 1340, 500 Pearl Street, New York, NY 10007 and (c) to me at Room 1360, 500 Pearl Street. Failure to file objections within 10 business days will preclude appellate review. *Thomas v. Arn*, 474 U.S. 140 (1985); *Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam); 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72, 6(a), and 6(e). Any request for an extension of time must be addressed to Judge Rakoff.



DOUGLAS F. EATON
United States Magistrate Judge
U.S. Courthouse
500 Pearl Street, Room 1360
New York, NY 10007
Telephone: 212-805-6175
Fax: 212-805-6181 fax

Dated: New York, New York
May 18, 2009

Copies of this Report and Recommendation (and of AUSA Reddy's May 8, 2009 letter and its exhibits) are being faxed to:

Richard Gray
c/o P.O. Williams, Queens 3 Area Office
(Fax: 718-558-5269)

Kirti V. Reddy, Esq.
Assistant U.S. Attorney
86 Chambers Street
New York, NY 10007
(Fax: 212-637-2786)

Copies of this Report and Recommendation (and of AUSA Reddy's May 8, 2009 letter and its exhibits) are being mailed to:

Richard Gray
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Rosedale, NY 11422

Pro Se Office
U.S. Courthouse
500 Pearl Street, Room 230
New York, NY 10007

Hon. Jed S. Rakoff